

R-19J

Honorable Frank O'Bannon
Governor of Indiana
Indianapolis, Indiana 46204

Dear Governor O'Bannon:

I am writing concerning Indiana's efforts to comply with the regional strategy to reduce smog across the eastern United States by reducing emissions of nitrogen oxides (NOx). This strategy -- known as the NOx State Implementation Plan (SIP) Call -- will protect the health of over one hundred million Americans living in Indiana and the eastern United States from harmful levels of air pollution. Reducing these emissions will prevent thousands of smog-related illnesses each year, including aggravated cases of childhood asthma.

The Environmental Protection Agency (EPA) is aware of the progress made by Indiana to meet the air pollution improvement goals of the NOx SIP Call. However, the draft materials that Indiana has submitted to EPA do not meet the requirements of the NOx SIP Call for making a complete submission, including adopted rules, by October 30, 2000. Our preliminary assessment of your submittal also reveals some problematic issues, which are identified in the enclosed document. We will provide more detailed comments directly to your Department of Environmental Management (IDEM). We are working with IDEM to ensure a complete submission so that these problems can be corrected, and IDEM can submit a complete NOx SIP revision for review and approval.

If a state does not submit a plan to EPA that meets the requirements of the NOx SIP Call, including adopted rules and a budget demonstration, the Clean Air Act authorizes EPA to make a "finding" of failure to submit a plan. Consequently, EPA is issuing a finding that Indiana has not submitted a complete, fully adopted SIP in response to the NOx SIP Call. A notice making this finding will be published shortly in the Federal Register. Please be assured that we will continue to work closely with you and IDEM to undertake all necessary

efforts to ensure that the State makes a complete submission, including adopted rules, as soon as possible. A failure to submit adopted rules in a timely fashion may lead to implementation of sanctions (which could take effect in Clark, Floyd, Lake and Porter Counties 18 months after we issue the finding) and a Federal Implementation Plan. Making such a finding is an important step in ensuring that all 19 states and the District of Columbia subject to the NOx SIP Call are moving forward to meet their responsibility to reduce NOx emissions that cause smog in downwind States.

I believe it is essential for us to take action as quickly as possible to achieve the public health benefits from this ground-breaking strategy. By acting expeditiously, you can secure cleaner air for the citizens of Indiana and other States in the eastern United States.

If you have any questions concerning this letter or these findings, please contact me.

Sincerely,

Francis X. Lyons
Regional Administrator

Enclosure

cc: Lori Kaplan, Commissioner
Indiana Department of Environmental Management

**Enclosure: EPA's Preliminary Assessment of
Indiana's NOx SIP Call Submittal**

After the Environmental Protection Agency (EPA) issued the regional transport rule, known as the oxides of nitrogen (NOx) State Implementation Plan (SIP) Call, in September 1998 to reduce smog across the eastern United States, several parties challenged the rule in court. In May 1999, as an interim measure, the Court stayed the requirement that States submit their plans to address transported smog. On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit issued a decision largely upholding the NOx SIP Call. Subsequently, the Court lifted the stay and ordered EPA to allow States until October 30, 2000, to submit adopted rules in response to the NOx SIP Call. The Court also extended the deadline for full implementation of the NOx SIP Call from May 1, 2003, to May 31, 2004. It is important that we move forward with plans to reduce smog levels by May 31, 2004. Our technical analysis supports that realizing these NOx reductions by 2004 is feasible without endangering the reliability of the electric power supply.

In light of the public health benefits that will result, and the March 3, 2000, court decision upholding the NOx SIP Call, we intend to move forward expeditiously in implementing the regional strategy to reduce smog. Indiana has made progress in meeting the requirements of the NOx SIP Call. However, Indiana has not submitted fully adopted rules. Since the draft rules are largely modeled after the Federal rules, in their current form they are for the most part approvable and could be processed quickly following final State approval and submission. However EPA does have some concerns with Indiana's rules. Specifics of the requirements and the status of Indiana's efforts to meet them are described in more detail below. We will follow-up with additional comments directly with the Indiana Department of Environmental Management (IDEM). However, since the State has not submitted a complete submission to date, EPA is notifying Indiana that pursuant to section 179(a) of the Clean Air Act, EPA will shortly publish a notice in the Federal Register making a finding that Indiana failed to submit a fully adopted SIP meeting the requirements of the NOx SIP Call.

The EPA intends to continue making all necessary efforts to ensure that the State can submit adopted rules as soon as possible so that we can avoid or replace a Federal Implementation Plan (FIP) in the State. Section 110(c) of the Clean Air Act provides that EPA promulgate a FIP no later than

2 years after issuing a finding under section 179(a). The EPA is making this finding to continue the process to protect public health, to assist downwind nonattainment areas in reaching attainment for the 1-hour ozone standard, and to ensure equity with States that have submitted adopted rules.

Deficiencies Identified with Respect to Indiana NOx SIP Efforts:

- Fully adopted rules have not been submitted to date.
- A technical budget demonstration, a required element of the NOx SIP, is not available for review. The budget demonstration is required to demonstrate that, using the SIP Call baseline inventory, Indiana can meet the 2007 SIP Call budget. This requirement is intended to ensure that the SIP Call is achieving the reductions envisioned. IDEM has identified some sources that it feels are misrepresented in the SIP Call inventory. We are working with IDEM on this issue to ensure that the SIP Call reductions are achieved.
- Unit level allocations were not submitted to date and are a required element of the NOx SIP Call.
- Additional comments will be made to IDEM following complete and detailed review of the rules.

EPA would also note that while the current draft rule is largely approvable because it closely parallels the SIP Call, the rule was recently published for second notice, and IDEM is seeking comment on a wide variety of issues. If significant changes are made to the rule, we will need to reevaluate those changes at that time.

If Indiana has not submitted a plan that EPA affirmatively determines is complete within 18 months of EPA's finding pursuant to section 179(a) of the Clean Air Act and 40 CFR section 52.31, the new source offset sanction identified in section 179(b) will be applied in each of the 1 -hour nonattainment areas within Indiana. If the State has still not made a complete, approvable submission six months after the offset sanction is imposed, then the highway funding sanction will be applied in each 1-hour ozone nonattainment area in accordance with 40 CFR 52.31. Current 1-hour ozone nonattainment areas include Clark, Floyd, Lake and Porter counties. The 18-month sanctions clock will stop and no sanctions will take effect if, within 18 months after

the date of the finding, EPA affirmatively finds that the State has made a complete submittal.

In addition, section 110(c) of the Clean Air Act provides that EPA promulgate a FIP no later than 2 years after a finding under section 179(a). Even if EPA promulgates a FIP, the sanctions process will continue.

standard bcc's: official file copy w/enclosure
 Originator's file copy w/enclosure
 Originating organization reading file
 w/enclosure

other bcc's: A. Rowan
 ORA Reading file
 R. Bahr w/enclosure
 N. Karim
 F. Williams w/enclosure

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